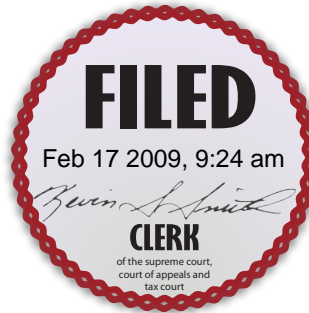


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

PHILIP R. SKODINSKI
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT MOTL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 71A03-0808-CR-423

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable R.W. Chamblee, Jr., Judge
Cause No. 71D08-0611-FB-00136

February 17, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Robert Motl (“Motl”) was convicted in St. Joseph Superior Court of Class B felony possession of a firearm by a serious violent felon. Motl appeals arguing that the evidence is insufficient to support his conviction. We affirm.

Facts and Procedural History

On May 18, 2005, Officer Neil Hoover (“Officer Hoover”) received a dispatch regarding a report of a suspicious van. The caller stated that the occupants of the van were “walking around up by [a] residence.” Tr. p. 18. Officer Hoover initiated a traffic stop when he saw a van that matched the description given by the caller. After learning that the driver, Mario Stewart (“Stewart”), did not have a driver’s license and that the license plate on the van did not match the vehicle, Officer Hoover asked for identification from the passengers, including Motl. None of the five individuals in the van had proper identification. The individuals were removed from the van, and shortly thereafter, Officer Jerome Ratkiewicz (“Officer Ratkiewicz”) arrived and began to question them.

One of the passengers, Samuel Hale (“Hale”) cooperated with Officer Ratkiewicz and told him that they had recently broken into a house in the area and stolen guns and a compound bow. Tr. pp. 76-77. While in the house, Hale placed the guns inside a black case and handed the case to Motl, who loaded it into the van. Hale also stated that when he and Stewart returned to the van, Motl opened the case and looked at the guns. Tr. p. 33. Additionally, the men discussed where they would hide the stolen items and how they would distribute them. Motl told Stewart he would sell one gun and give him the money. Ultimately, they decided to hide the items in Motl’s garage. Hale directed

Officers Hoover and Ratkiewicz to Motl's residence where they recovered three shotguns and a compound bow.

On November 2, 2006, Motl was charged with possession of a firearm by a serious violent felon, as a Class B felony. On May 13, 2008, a jury found Motl guilty as charged. On June 20, 2006, Motl was sentenced to fifteen years. Motl now appeals.

Discussion and Decision

When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Additionally, the Indiana Supreme Court has stated that it is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Appellate courts will affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (citing Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." Id. at 147 (citing Moore v. State, 652 N.E.2d 53, 55 (Ind. 2000)). The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

To establish that Motl committed Class B felony possession of a firearm by a serious violent felon, the State was required to prove that Motl, who had previously been convicted of committing a serious violent felony, knowingly or intentionally possessed a firearm. See Ind. Code § 35-47-4-5 (2004 & Supp. 2008). Motl argues that the evidence is insufficient to support his conviction of serious violent felon in possession of a firearm.

Both at trial and on appeal, Motl admits his involvement in the burglary, but claims he was not aware that the black case contained guns. Additionally, he argues that the testimony of Hale and Stewart are so inconsistent with each other that “it sheds doubt on their stories.” Br. of Appellant at 3. However, despite minor inconsistencies between Stewart’s and Hale’s testimony, they were both consistent on the relevant point to the case that Motl knew the contents of the black case. Tr. p. 33; Tr. pp. 62-63. Stewart testified that Motl initially claimed the guns for himself, but then told Stewart he would sell a gun and give him the money. Hale testified that while in the van, Motl took the guns out of the black case and examined them. Moreover, it is undisputed that the guns were stored and eventually seized from Motl’s house. This evidence supports a reasonable inference that Motl knowingly and intentionally possessed the firearms.

Conclusion

The evidence is sufficient to support Motl’s conviction of Class B felony serious violent felon in possession of a firearm.

Affirmed.

BAILEY, J., and BARNES, J., concur.